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ALEXANDER L. STEVAS,
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No. 84-1571

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1984

MYRON H. O'KEEFE, as Personal Representative of the Estate of Marie M. O'Keefe,

Appellant,

v.

COUNTY OF HENNEPIN,

Appellee.

On appeal from the Court of Appeals of Minnesota

APPELLEE'S MOTION TO DISMISS

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MOTION TO DISMISS

County of Hennepin, Appellee, hereby moves this court to dismiss this action pursuant to Rule 16 of the Rules of the Supreme Court of the United States in that the present matter does not present a substantial Federal question and further that the judgment rests on an adequate non-Federal basis.

STATEMENT OF THE CASE

This is an appeal from a decision filed by the Minnesota Court of Appeals on September 5, 1984. The decision of the Minnesota Court of Appeals allowed to stand a claim of the Hennepin County Department of Economic Assistance in the amount of $58,445.27 for Medical Assistance benefits against the estate of Marie O'Keefe as a last illness expense. The decision further permits the real estate in the Estate of Marie O'Keefe to be subject to the full claim of the Hennepin County Department of Economic Assistance. (A-15)

Marie O'Keefe died testate on April 1, 1983. Marie O'Keefe's son, Myron, named in her will as an executor, was appointed Personal Representative of the Estate on May 9, 1983. Hennepin County filed a claim against the Estate of Marie O'Keefe in the amount of $58,445.27 in Medical Assistance benefits.

The personal representative of the Estate of Marie O'Keefe, i.e., her son Myron O'Keefe, disallowed the claim as to the benefits be paid by the Hennepin County Department of Economic Assistance prior to August 1, 1982. Hennepin County then petitioned for proceeding on its claim for allowance after disallowance by the Personal Representative. The Honorable Melvin J. Peterson, Judge of the District Court, Fourth Judicial District (Probate Division) allowed the claim of the Hennepin County Department of Economic Assistance. (A-24) The order of Judge Peterson was appealed to the Minnesota Court of Appeals which affirmed the Probate Court decision on September 5, 1984. (A-15)

The Minnesota Supreme Court denied review of the decision of the Minnesota Court of Appeals on January 2, 1985. (A-16)

ARGUMENT

Appellee County of Hennepin administers Medical Assistance pursuant to Federal and State statutes and regulations. Medical Assistance (MA), also known as Medicaid, is a joint Federal-State program established by Congress as Title XIX of the Social Security Act to provide medical services to certain persons unable to pay the costs of necessary medical care. 42 U.S.C. § 1396 et seq. The United States Department of Health and Human Services (HHS) is the Federal agency responsible for administering MA. 42 U.S.C.A. 1396 entitled Authorization of Appropriations provides:

> "For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for

> independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education and Welfare, State plans for medical assistance."

Participation by states in the MA program is optional. If a state elects to participate, however, it must abide by Federal statutory and administrative guidelines. Harris v. McRae, _____ U.S. _____, 101 S. Ct. 2671 (1981); Townsend v. Swank, 404 U.S. 282, #91971). The State of Minnesota has elected to participate in the MA program. M.S. Chap. 256B (1980). The Department of Human Services (DHS) is the "single state agency" designated pursuant to 42 U.S.C. § 1396a(a)(5) to administer MA in Minnesota. M.S. § 256B.021, Subd. 5 and § 256B.04 (1982).

M.S. § 256B.15 provides in pertinent part:

> "CLAIMS AGAINST ESTATES. If a person receives any medical assistance hereunder, on his death, if he is single, or on the death of the person and his surviving spouse, if he is married, and only at a time when he has no surviving child who is under 21 or is blind or totally disabled, the total amount paid for medical assistance rendered for the person, after age 65, without interest, shall be filed as a claim against the estate of the person in the court having jurisdiction to probate the estate***" (Emphasis supplied)

As was noted heretofore, the Federal law which governs the MA program is found in 42 U.S.C.A. § 1396 et seq.

42 U.S.C.A. § 1396(a)(18) provides in pertinent part that a state plan for MA must:

> "(18) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, in the case

> of an individual who was 65 years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program) or any medical assistance correctly paid on behalf of such individual under the plan" (Emphasis added)

Similar language is found in the corresponding Federal Regulation at 42 CFR Part 433 State Fiscal Administration, Subpart B, General Administrative Requirements, under §433.36(f) which states:

> (f) Recipients 65 years of age or older. If a recipient was 65 years of age or older when he received Medicaid, an adjustment or recovery of Medicaid claims correctly paid may be made only after his death, from his estate -
> (1) After the death of the surviving spouse, if any; and
> (2) When there is no surviving child who is under age 21 or blind or disabled as defined in the plan.

The amendment to Minnesota Statute § 525.145(3) dealt only with the change in status of the exempt nature of the asset, as of August 1, 1982, and then April 1, 1982. It had nothing to do with nor anything to say about when the claimable Medical Assistance amounts had been incurred or paid out.

The amendment expressly provides that the deletion of the homestead exemption is "effective as to estates of decedents dying after August 1, 1982." Medical Assistance claims filed in decedent's estates after that date, by necessity, would have to include amounts paid prior to that date.

The appellant raises in his Jurisdictional Statement that the statute, applied retroactively, allows the State of Minnesota and the County of Hennepin to abrogate its own contract. (p. 17 of Appellant's Jurisdictional Statement) The due process analysis generally is expressed in terms of whether a "vested right" has been

affected. See e.g., SUTHERLAND, STATUTORY CONSTRUCTION, §§ 41.05 and 41.06 (1973).

When the statutory exemption which is at issue was removed, no vested right of the heirs of Marie M. O'Keefe was impaired. The heirs of Marie O'Keefe had merely an expectancy, for no one is an heir of the living. McFadden v. McNorton, 193, Va. 455, 69 SE.2d 445 (1952). The heirs of Marie O'Keefe lost no vested right when the exemption was eliminated from Minnesota Statute 525.145(3) as to Medical Assistance claims, for the heirs had no right to the property of Marie O'Keefe. "The immunity from debts that inures to the heirs is appended only to such property as the heirs acquire a right of ownership in at the death of the ancestor." Hinson v. Booth, 39 Fla, 333, 22 So. 691, 692 (1897).

The Hennepin County Probate Court, the Honorable Richard Wolfson, Referee, and Melvin J. Peterson, Judge, in its order of

November 16, 1983 in a similar case, In the matter of the estate of Edith E. Spencer, file #14706 (A-25), as follows:

> "Exemption from creditors' claims, moreover, is a privilege and not a vested right but one the validity of which is to be determined, in most instances, by the conditions which exist at the time the privilege is claimed. Wyoming County Bank and Trust Co. v. Kiley, 75 A.2d 477,430 N.Y.S.2d 900, 902 (1980). See also, Chandler v. Horne, et al., 154 N.E. 738 (Ohio App. 1926). Elsewhere the homestead exemption has been held a statutory privilege and not a vested right that cannot be impaired by legislation after it has been acquired. In re Ragan's Estate, 23 N.W.2d 521 (1946). See also, United States v. Morgan, 554 F.Supp. 582 (D.C. Colo. 1982) and Walkup v. Covington, 114 S.W.2d 45, 46 (Tenn.

1938). Even if the homestead statute does produce vested rights, they are determined as of the date of the death of the owner. Hicks v. Huggins, 405 So.2d 1324 (Ala. Cts. App. 1981), Widow entitled to homestead available under statute in force at date of husband's death but repealed before she claimed it.

"Enforcement of the total value of the claim against the real estate is not retroactive legislation. Generally:

> 'A vested right is more than a mere expectation based upon an anticipated continuance of existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property. If an existing law changes by amendment or repeal prior to the vesting of a right, no cause to object arises. A statute is not retroactive merely because it relates to antecedent facts for its operation. Griffin v. City of North Chicago, 112 Ill.App.3d 901, 445 N.E.2d 827 (1983) (citations omitted).'

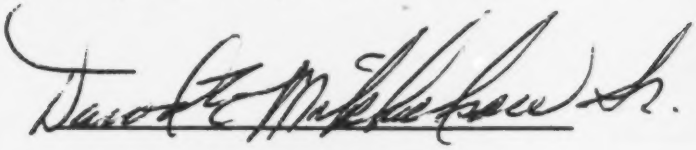
The heirs of the decedent had no right which was impaired. M.S. § 525.145(3) applies to the estates of decedents dying after its effective date."

Marie O'Keefe did not have a vested right in the exemption granted by the statute. The heirs of Marie O'Keefe had no vested right in the real estate in the estate of Marie O'Keefe until Marie O'Keefe died and then their right was to the real estate subject to the claim of the Hennepin County Department of Economic Assistance. The Minnesota legislature could validly alter the homestead law and curtail the privilege of ammunity of the homestead from creditors.

Appellee County of Hennepin respectfully argues that Appellant has not raised a substantial Federal question and that the

decision of the Minnesota Court of Appeals rests on an adequate non-Federal basis.

Respectfully submitted,



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A P P E N D I X

STATE OF MINNESOTA

IN COURT OF APPEALS

C4-84-530

Hennepin County Parker, Judge

In re Estate of
Marie M. O'Keefe,
Deceased.

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Endorsed
Filed September 11,
1984
Wayne Tschimperle,
Clerk
Minnesota Appellate
Courts

S Y L L A B U S

The claim of a county against the estate of a recipient of medical assistance may be applied to the homestead for aid rendered prior to revocation of the homestead exemption.

Affirmed.

Heard, considered and decided by Parker, Presiding Judge, Foley, Judge, and Huspeni, Judge.

O P I N I O N

PARKER, Judge

This is an appeal from an order allowing a claim of Hennepin County against the estate of Marie O'Keefe for the value of medical assistance benefits in the amount of $58,445.27, to be assessed in full against the decedent's homestead. Marie O'Keefe died testate on April 1,

1983. Hennepin County filed a claim against her estate, which was disallowed by the personal representative of her estate, her son, Myron O'Keefe. Hennepin County then petitioned for a hearing on its claim. The question was submitted in letters, memoranda and affidavits. The Court granted the County's claim in full and allowed the assessment against the homestead. We affirm.

ISSUE

Is a decedent's homestead exempt from a claim for medical assistance benefits received before the effective date of the elimination of the exemption if decedent died after that date?

FACTS

Marie M. O'Keefe broke a femur and was hospitalized in 1979. After being discharged she entered a nursing home,

where she resided continuously until her death on April 1, 1983. Marie O'Keefe and her husband owned a home in Minneapolis which was occupied by Mr. O'Keefe and their son, Myron, while Marie was in the nursing home. When Mr. O'Keefe died in 1980 their son continued to occupy the home.

During Mrs. O'Keefe's illness she applied for and received medical assistance benefits totaling $58,445.27 for medical care rendered between December 1, 1979, and April 1, 1983. When O'Keefe applied for the benefits, homestead property in estates was not subject to assessment for medical benefits paid. However, since her application, the law was amended to eliminate the exception.

Hennepin County filed its claim against the O'Keefe estate for $58,445.27.

The district court found that the claim was totally collectible against the decedent's homestead. The personal representative contends that this constitutes an impermissible retroactive application of the statute eliminating the homestead exemption.

DISCUSSION

We hold that the trial court properly applied Minn. Stat. §525.145(3) (1982) in granting Hennepin County's claim for the value of medical assistance benefits provided in the amount of $58,445.27 to be assessed in full against the decedent's homestead.

On March 23, 1982, Minn. Stat. §525.145(3) (1982) was amended to subject a decedent's homestead to claims filed pursuant to Minn. Stat. §256B.15 for medical assistance benefits. The statute was

revised as follows:

> Where the homestead passes by descent or will to the spouse or children or issue of deceased children, it shall be exempt from all debts which were not valid charges thereon at the time of decedent's death; except that the homestead shall be subject to a claim filed pursuant to section 256B.15 for medical assistance benefits.

1982 Minn. Laws, ch. 621, sec. 3(3) (emphasis indicates amendment).

According to Section 4 of this amendment, it was to be "effective for the estates of decedents dying after August 1, 1982." Eight days later, on March 31, 1982, it was amended again to add claims for State hospital care under Section 246.53. 1982 Minn. Laws, ch. 641, sec. 20(3). The two amendments were merged, and Minn. Stat. §525.145(3) now reads:

> Where the homestead passes by descent or will to the spouse or children or issue of deceased children, it shall be exempt from all debts which were not valid charges thereon at the time of decedent's death; except that the homestead shall be subject to a claim filed pursuant to section 246.53 for state hospital care or 256B.15.

The latter amendment was "* * * effective the day following final enactment," which was April 1, 1982. 1982 Minn. Laws, ch. 641, sec. 21.

Appellant contends that the effective date of the statute as to claims for medical assistance was August 1, 1982, not April 1, 1982. We agree with the County that the effective date is April 1, 1982, according to Minn. Stat. §645.26, subd. 3 (1980), which provides:

> When the provisions of two or more laws passed during the same session of the legislature are irreconcilable, the law latest in date of final enactment * * * shall prevail * * *.

The thrust of appellant's argument is that to allow the claim against the O'Keefe homestead would make Minn. Stat. §525.145 (3), as amended, "a retroactive application of statute" which was not intended by the

legislature and is unconstitutional. Appellant further contends that the claim should be barred on grounds of promissory estoppel.

Minn. Stat. §525.145(3), as amended by Chapters 621 and 641, is not a retroactive law. The amended versions state that homesteads shall be subject to claims for medical assistance under Minn. Stat. §256B.15. Minn. Stat. §256B.15 requires that a claim for medical assistance shall be filed against the estate for assistance given after age 65 on death of the recipient. There is no provision for a claim for medical assistance paid prior to the recipient's death against the recipient herself or her property. While there is a potential claim prior to death, Hennepin County legally had no claim until Marie O'Keefe died.

At the time of Marie O'Keefe's death

on April 1, 1983, Hennepin County's claim arose under §256B.15. At the time of her death §525.145(3), as amended, was in effect and had been since April 1, 1982. That amendment increased the pool of assets from which medical assistance could be recovered to include the homestead from and after April 1, 1982. There was nothing retroactive either in the claim or in the availablity of the homestead asset.

The amendment to Minn. Stat. §525.145 (3) dealt only with the change in status of the exempt nature of the asset as of August 1, 1982, and then April 1, 1982. The statute does not speak to <u>when</u> the claimable medical amounts had been incurred or paid out. The County claims that to argue that such an amendment is "retroactive" is to say that imposition of an estate tax on decedents dying after April

1, 1982 could not be applied to assets earned or acquired by a decedent prior to that date. That sort of statute, as does the instant one, obviously has a retroactive effect, but no one would seriously contend that it could not be applied to taxable assets earned or acquired prior to the effective date of the estate tax law.

If the 1982 amendments to §525.145(3) were considered to have a retroactive effect, the legislative intent is clear and manifest from a reading of that amendment, that homesteads are to be subject to a claim for all amounts paid for medical assistance no matter when paid out. Thus, even if we conclude that this statutory amendment is retroactive, it complies with Minn. Stat. §645.21.

Chapter 621 expressly provides that deletion of the homestead exemption is

"effective as to estates of decedents dying after August 1, 1982." Medical assistance claims filed in decedents' estates after that date must, be necessity, include amounts paid prior to that date. To adopt the interpretation urged by appellant would render the amendment a nullity for many years after its express effective date.

When the statutory exemption was removed, no vested right of the heirs of Marie O'Keefe was impaired. The heirs of Marie O'Keefe had merely an expectancy, for no one is an heir of the living. McFadden v. McNorton, 193 Va. 455, 69 S.E. 2d 445 (1952). "The immunity from debts that inures to the heirs is appended only to such property as the heirs acquire a right of ownership in at the death of the ancestor." Hinson v. Booth, 39 Fls. 333, 22 So. 691 (1897).

In a similar case, In the Matter of the Estate of Spencer, file #14706, Hennepin County, the probate court cogently addressed this issue:

> Exemption from creditors' claims, moreover, is a privilege and not a vested right but one the validity of which is to be determined, in most instances, by the conditions which exist at the time the privilege is claimed. Wyoming County Bank and Trust Co. v. Kiley, 75 A.2d 477, 430 N.Y.S.2d 900, 902 (1980). See also Chandler v. Horne, et al., 154 N.E. 738 (Ohio App. 1926). Elsewhere the homestead exemption has been held a statutory privilege and not a vested right that cannot be impaired by legislation after it has been acquired. In re Ragan's Estate, 23 N.W.2d 521 (1946). See also United States v. Morgan, 554 F.Supp. 582 (D.C. Colo. 1982), and Walkup v. Covington, 114 S.W.2d 45, 46 (Tenn. 1938). Even if the homestead statute does produce vested rights they are determined as of the date of the death of the owner. Hicks v. Huggins, 405 So.2d 1324 (Ala. Cts. App. 1981), Widow entitled to homestead available under statute in force at date of husband's death but repealed before she claimed it.
>
> Enforcement of the total value of the claim against the real estate is not retroactive legislation. Generally: 'A vested right is more than a mere expectation based upon an

> anticipated continuance of existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property. If an existing law changes by amendment or repeal prior to the vesting of a right no cause to object arises. A statute is not retroactive merely because it relates to antecedent facts for its operation. Griffin v. City of North Chicago, 112 Ill. App. 3d 901, 445 N.E.2d 827 (1983) (citations omitted).

Support for the foregoing analysis is found in a decision of the Minnesota Supreme Court dealing with statutory repeal of the defense of usury as applied to certain transactions. Our court applied the repeal to transactions taking place prior to the change, finding the borrower had no vested right to the defense. See United Realty Trust v. Property Development and Research Company, 269 N.W.2d 737 (Minn. 1978).

Appellant argues that a retroactive reading of the statute impairs the obligation of contracts. The facts of this case

do not lend themselves to such an analysis because there was no obligation of contract between the County and Marie O'Keefe.

Appellant further argues that, if read retroactively, the statute takes property without due process of law. The due process analysis generally is expressed in terms of whether a "vested right" has been affected. See e.g. Sutherland, Statutory Construction, §§41.05 and 41.06 (1973).

Appellant's final contention is that the County should be estopped from asserting its claim against the estate because of alleged representations by a Hennepin County attorney to O'Keefe's attorney about the status of the law in 1980.

We agree with the County that the factual situation of the O'Keefe family and the casual oral opinion of the current status of the law made to the attorney the

O'Keefes retained does not constitute promissory estoppel.

D E C I S I O N

We affirm the probate court's holding that Hennepin County's claim for medical assistance is allowable in the full amount of $58,445.27 pursuant to Minn. Stat. §256B.15 as an expense of last illness and was properly assessed in full against decedent's homestead.

Affirmed.

Edward Parker, Judge

Sept. 5, 1984

Office of
Appellate Courts
filed
Jan. 2 1985

Wayne Tschimperle
Clerk

STATE OF MINNESOTA

IN SUPREME COURT

C4-84-530

In re Estate of Marie M. O'Keefe, Deceased.

O R D E R

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that Myron H. O'Keefe's petition for further review be, and the same is, denied.

Dated: Jan. 2, 1985

BY THE COURT:

Douglas K. Amdahl
Chief Justice

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
DISTRICT COURT
PROBATE COURT DIVISION
FILE NO. 147380

In the Matter of the Estate of MARIE M. O'KEEFE, Deceased.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ALLOWING CLAIM AND PERMITTING IT TO BE ASSESSED IN FULL AGAINST REAL ESTATE

The above matter came on for hearing before the undersigned Judge of the District Court, Probate Division, on November 9, 1983, pursuant to an Order for Hearing on Petition for Proceeding for Claim and for Allowance After Disallowance by Personal Representative. Also before the court was the issue of whether decedent's alleged homestead was exempt from the Medical Association claim of Hennepin County.

Thomas Davern, Esq., appeared as counsel for and on behalf of the personal

representative, Myron H. O'Keefe. Arthur W. Katzman, Esq., appeared as counsel for and on behalf of claimant County of Hennepin.

Upon all the testimony, exhibits, files, records, proceedings, memoranda, statements and arguments of counsel named herein, the court makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. Notice of the hearing was duly given to all interested parties by mailed notice.

2. Hennepin County paid $58,445.27 in Medical Assistance benefits for and on behalf of decedent between late 1980 and April 1, 1983, the date of her death.

3. The personal representative requested additional time to review specific items of service on the claimant's

bill and was granted an additional 30 days to review the same. Subsequently the personal representative requested additional time for the same purpose and accordingly the court granted him an additional extension until January 12, 1984. No evidence of overcharge or error was found by the personal representative.

4. The main asset in the estate appears to be real estate owned by decedent located at 3909 - 10th Avenue South, Minneapolis, Hennepin County, Minnesota, legally described as:

Lot 26, Block 7, Chicago Avenue Park

The personal representative asserted that this real estate was the decedent's homestead,[1] and accordingly exempt from the

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[1]There is some question as to whether the real estate was in fact decedent's homestead. Although she did file a Notice

County's Medical Assistance claim, at least as to the extent of Medical Assistance benefits provided prior to the amendment of M.S. §525.145(3), effective April 1, 1982.[2]

5. The personal representative also made other factual assertions in his memo-

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to Claim Homestead on December 8, 1980, it appears she was absent from the same for well over six months prior to filing the same, having resided in Prospect Park Nursing Home since July 20, 1979. M.S. §510.07. Because the court concludes that the real estate, even if it is homestead, is subject to payment of the county's Medical Assistance claim, it is unnecessary to decide whether it was indeed the decedent's homestead. However, for the purposes of this order, the court will assume, arguendo, that the same was her homestead.

[2]While the personal representative's original notice of disallowance makes reference to August 1, 1982, inferring that this is the date on which §525.145(3) was amended, this court has previously determined in In Re Estate of Mabel Feilzer, File #145910, August 23, 1983, that the effective date of that amendment was April 1, 1982.

randum dated November 23, 1983 pertaining to the family's investigation of the law on a homestead's exemption from claims, including Medical Assistance claims and their reliance on what they discovered. These were objected to by claimant Hennepin County on the basis that these facts were not properly proven.[3]

6. Although some general inquiries were allegedly made as to what the law was in 1980 pertaining to homestead exemptions, there were no misrepresentations as to what the law was. Further, there were no

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[3]The personal representative apparently is offering to prove that the property is homestead, as noted in footnote 1, and that the decedent and her family would not have applied for Medical Assistance but for the fact that they relied on the law in effect at the time of that application. The allegations are set forth in two affidavits dated November 23, 1983, and will not be restated. They appear to be somewhat self-contradictory. But again for the purpose of this order, the court will assume, arguendo, the allegations to be true.

representations that it would not be changed by the legislature.

CONCLUSIONS OF LAW

1. The claim of Hennepin County for Medical Assistance benefits paid for and on behalf of decedent is allowable in the full amount of $58,445.27, purusant to M.S. §256B.15 as an expense of last illness.

2. The decedent's real estate, even if the same was her homestead, is subject to the payment of the Medical Assistance claim in its full amount; this includes amounts paid for or benefits provided to decedent before the April 1, 1982 effective date of the elimination of the homestead exemption from M.S. §525.145 (3) as to MA claims.

3. The decedent and her heirs did not have a vested interest in the homestead

exemption. Rather, they had a mere expectancy or at most a statutory privilege. An expectancy or privilege is determined by conditions at the time it is claimed; in this case that was at the death of the decedent. At that time, the legislature had previously eliminated the expectancy or privilege a year earlier. In re Estate of Edith Spencer, supra, and cases cited therein.

4. The investigation of the status of the law in 1980 by decedent and her family and their alleged reliance on it does not change an expectancy or privilege into a vested right.

ORDER

1. That the claim for Medical Assistance benefits in the amount of $58,445.27 is allowed as a last illness expense.

2. That the real estate in this

estate is subject to the full claim of the Hennepin County Department of Economic Assistance.

BY THE COURT:

Dated: Feb. 17, 1984.

(COURT SEAL)

Melvin J. Peterson
Judge

Filed February 17, 1984

Mary Hawkinson
Clerk of Probate Court

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF HENNEPIN — PROBATE DIVISION

FOURTH JUDICIAL DISTRICT

FILE NO. 147076

In the Matter of:	)	ORDER ALLOWING CLAIM
	)	TO BE ASSESSED IN
Estate of Edith	)	FULL AGAINST REAL
E. Spencer,	)	ESTATE
	)	
Deceased.	)	

This matter came on for hearing on August 24- 1983, on the petition of the Hennepin County Department of Economic Assistance for an order adjudicating that the real estate in this estate is available to satisfy the entire amount of its valid claim. Petitioner appeared by Arthur Katzman, Esq., Assistant Hennepin County Attorney. Objecting to the petition were the heirs of the decedent: Paul Spencer, appearing personally and

represented by Duane Franke, Esq.; John Spencer, appearing personally and represented by Jeffrey Levy, Esq.; and Daniel Spencer, appearing by Mr. Levy. The matter was referred for hearing to Richard Wolfson, Referee in Probate. Final briefs were submitted September 21, 1983. There were no disputed facts and the matter turns on purely legal issues. Two issues were presented:

(1) Is a decedent's homestead exempt from a claim for medical assistance benefits received before the effective date of the elimination of the exemption if the decedent died after that date?

(2) Did decedent die possessing a homestead?

It is unnecessary to reach the second issue if the exemption is held inapplicable, for then the homestead status is irrelevant.

CONCLUSION OF LAW

A decedent's homestead is subject to payment of a medical assistance claim including amounts received before the effective date of the elimination of the exemption if decedent died after that date.

The Court, having reviewed the files and records and being fully advised in the premises, now ORDERS:

1. That the real estate in this estate is subject to the full claim of the Hennepin County Department of Economic Assistance.

2. That the memorandum attached be and hereby is made part of this Order.

Dated: November 16, 1983

BY THE COURT

(COURT SEAL)

MELVIN J. PETERSON
Judge of Probate Court

Order Recommended by:

RICHARD WOLFSON
Referee in Probate

Filed: November 16, 1983

Clerk of Probate Court

M E M O R A N D U M

It is undisputed that Edith Spencer was a medical assistance recipient both before and after the amendment to M.S. §525.145(3) making the homestead subject to payment of a medical assistance claim. Indeed, that claim has previously been allowed by Order of this Court dated August 24, 1983.

I. Passes by Descent or Will.

The statute, M.S. §525.145(3), subjects the homestead to this claim "[W]here the homestead passes by descent or will." No property "passes" until the death of decedent, a basic jurisdictional prerequi-

site of an estate proceeding. See, e.g., M.S. §524.3-301(1)(ii) (application must list date of death) and M.S. §524.3-301. The laws of descent cannot operate until the death of the decedent. See Hannon v. Southern Pacific R. Co., 12 Cal.A.350, 107 P. 335 (1909). The homestead statute is applicable only on the death of the decedent. The terms of the statute existing on the death of the decedent are controlling:

> "Exemptions are statutory, or constitutional, and the law conferring them must be of force when they are claimed. A law giving them which has been repealed, is not, and can not be, revived by a claim under it, though it may have been of force when the contract was made." Nelson v. McCrary, 60 Ala. 301, 312 (1877).

Here the valid claim may be satisfied from even a homestead.

II. Exempt except for §245B.15 claims.

A. Exempt.

Even before this amendment creditors had a valid claim against an estate though the only asset was the homestead. See, e.g., Note, 25 MINN. L.REV. 385 (1940) and Howard, Summary Probate Proceedings - The Homestead, MINN. L.REV. 104 (1935). But the claim could not be satisfied from the homestead. The exemption meant that the homestead was unavailable for seizure and execution. In re Estate of Peterson, 198 Minn. 45, 268 N.W. 707 (1936). Liens and other charges on the homestead could be enforced only in District Court. M.S. §525.145(3) and M.N. §524.3-105.

B. Subject to M.S. §256B.15 claims.

The homestead is now "subject to a claim filed pursuant to . . . 256B.15 for medical assistance benefits." M.S. §525. 145(3). Thus it can be sold in the probate administration to pay these claims; it is subject to seizure and execution.

"Estate includes every right and interest of a decedent in property real or personal . . ." M.N. §525.13. At her death, decedent owned this real property. M.S. §256B.15 provides for filing the claim against this "estate"; M.S. §256.145(3) subjects the property to payment of the claim even if the "estate" is a homestead.

III. Vested Rights.

Objectors urge that allowing claimant to be repaid for benefits paid before the repeal of the exemption is retroactive legislation impairing vested rights. See, e.g., SUTHERLAND, STATUTORY CONSTRUCTION, §§41.05 and 41.06 (1973).

When the statutory exemption at issue was removed no vested right was impaired. The heirs of Edith Spencer had merely an expectancy, for no one is an heir of the

living. McFadden v. McNorton, 193, Va. 455, 69 S.E.2s 445 (1952). The heirs of Edith Spencer lost no vested right when the exemption was repealed, for they then had right to her property. "The immunity from debts that inures to the heirs is appended only to such property as the heirs acquire a right of ownership in at the death of the ancestor." Hinson v. Booth, 39 Fla, 333, 22 So. 691, 692 (1897).

Exemption from creditors' claims, moreover, is a privilege and not a vested right "but one the validity of which is to be determined, in most instances, by the conditions which exist at the time the privilege is claimed. Wyoming County Bank and Trust Co. v. Kiley, 75 A.2d 477, 430 N.T.S.2d 900, 902 (1980). See also, Chandler v. Horne, et al., 154 N.E. 738 (Ohio App. 1926). Elsewhere the homestead exemption has been held a statutory priv-

ilege and "not a vested right that cannot be imparied by legislation after it has been acquired." In re Ragan's Estate, 23 N.W.2d 521 (1946). See also, United States v. Morgan, 554 F.Supp. 582 (D.C.Colo. 1982) and Walkup v. Covington, 114 S.W.2d 45, 46 (Tenn. 1938). Even if the homestead statute does produce vested rights they are determined as of the date of the death of the owner. Hicks v. Huggins, 405 So.2d 1324 (Ala. Cts. App. 1981) (Widow entitled to homestead avialable under statute in force at date of husband's death but repealed before she claimed it.)

Enforcement of the total value of the claim against the real estate is not retroactive legislation. Generally:

> "A vested right is more than a mere expectation based upon an anticipated continuance of existlaw; it must have become a title, legal or equitable, to the present or future enjoyment of property.

> If an existing law changes by amendment or repeal prior to the vesting of a right no cause to object arises. A statute is not retroactive merely because it relates to antecedent facts for its operation." Griffin v. City of North Chicago, 112 Ill. App.3d 901, 445 N.E.2d 827 (1983) (citations omitted).

The heirs of the decedent had no right which was impaired. M.S.§525.145(3) applies to the estates of decedents dying after its effective date. Edith Spencer had no vested right in the exemptions granted by the statute. There was no unconstitutional deprivation of her property. Even if this property is a homestead, it is subject to the entire claim of the Petitioner.

Conclusion.

No vested right was impaired. The legislature could validly alter the homestead law and curtail the privilege of immunity of the homestead from creditors. Edith Spencer had no vested right in that privilege. Her heirs had no vested right

in the property until she died and then their right was to the realty subject to the claim.

The real estate, even if a homestead, is subject to execution for payment of the entire M.S. §256B.15 claim. It is therefore unnecessary to decide the issue of whether it indeed was the homestead.

AFFIDAVIT OF SERVICE

County of Hennepin)
) ss
State of Minnesota)

I, Robert W. Gyurci, being first duly sworn, hereby state that I served true copies of this Motion to Dismiss on the following parties on May 3, 1985, by first class mail, with postage prepaid, deposited in the United States Mail in Minneapolis, Minnesota. I further state that the following parties are all the parties that are required to be served in this matter:

Mr. John D. Hagen, Jr.
Post Office Box 15609
Minneapolis, MN 55415

Mr. Hubert H. Humphrey, III
Attorney General
State of Minnesota
200 Ford Building
117 University Avenue
St. Paul, MN 55155
Attn. Richard S. Slowes
Assistant Attorney General

/s/ Robert W. Gyurci

Subscribed and sworn to before me this 3rd day of May, 1985.

Carol Ellingson

(notarial seal)